

## **8 Official Opinions of the Compliance Board 32 (2012)**

- ◆ Minutes
    - ◇ Generally
      - ✦ level of detail required
      - ✦ preparation within reasonable time, required
- 

February 10, 2012

*Re: Carroll County Utilities Advisory Council (Michele Fluss, Complainant)*

We have considered the complaint of Michele J. Fluss (“Complainant”) that the Carroll County Utilities Advisory Council (“Council”) has violated the provisions of the Open Meetings Act (the “Act”) that pertain to the preparation and approval of minutes. We have also considered the response submitted for the Council by the Deputy Director of Carroll County’s Department of Public Works.

We have often set forth the principles governing a public body’s preparation and approval of the minutes of meetings subject to the Act. *See, e.g., 6 OMCB Opinions* 85, 87-88 (2009) (citing earlier opinions). As the Council has mostly acknowledged the deficiencies cited by Complainant, and in fact did so in communications to Complainant before she filed this complaint, our discussion of the two categories of alleged violations can be brief.

First, Complainant states that the Council’s minutes of meetings held from September 24, 2009, through March 24, 2011, are deficient because they do not reflect a vote to approve any prior minutes. The Council posted those sets of minutes on its website under the heading, “Minutes.” The Deputy Director explains that the Council meets about four times annually and has met a total of nine times since its creation by the County Council in 2008. He states that the Council promptly adopted the minutes of the first seven meetings in each succeeding meeting and that the Council was “remiss” in failing to record those actions in its minutes. We agree with the Deputy Director’s acknowledgment that minutes should reflect actions taken by the public body during its meetings. That principle applies here, even though the Council

made the adoption of its minutes clear by posting them as “minutes.” We note that each of the two most recently posted sets of minutes reflects the Council’s approvals of the minutes of the prior meeting, and so we need not discuss the matter further. *See, e.g., 6 OMCB Opinions 203,209 (2009)* (stating that the public body’s acknowledgment and change in policy made discussion of each alleged violation unnecessary).

Second, Complainant alleges that the Council violated the Act by failing “to prepare, adopt, and make [its May 5, 2011, and August 25, 2011,] minutes available within a reasonable time at the office of [its] minutes custodian.” The County provided her with both sets of minutes in draft form in November 2011, and the Deputy Director explained to Complainant that the “minutes must be approved before they are posted.” The meeting at which the Council had expected to approve those documents as minutes was then canceled, and Complainant protested the Council’s delay in producing approved minutes. On November 29, 2011, the Deputy Director responded to her message by agreeing with her that the Council “was out of compliance with May’s meeting minutes.” As to those minutes, the Deputy Director apologized and stated that he had taken measures to see that “higher priority [be given] to insure this does not happen again.” As of December 5, 2011, the date of her complaint, the Council had not met and had not adopted them. The Council apparently adopted both sets in January, 2012, and they, too, are now posted on the County’s website.

The delay in the Council’s approval of the minutes appears to have arisen partly from the Council’s adherence to its practice of approving its minutes in a public meeting.<sup>1</sup> That practice assures compliance with the Act when the public body meets regularly at fairly closely-spaced times, but not necessarily when it meets only as the need arises or when meetings are canceled. In 6 *OMCB Opinions* 85, 88, we advised that “routine delays of several months would be unlawful.” There, we found that a four-month delay violated the Act and stated that the town board in question “should follow the Town’s attorney’s advice to implement a process by which minutes can be approved by mail when a future meeting is not scheduled.” That same advice applies here.

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<sup>1</sup> We need not discuss the delay in the drafting of the May 5, 2011, minutes. The Deputy Director informed Complainant before she filed her complaint that minutes would be drafted more more quickly in the future, and the draft for the August 2011 meeting was in fact prepared more quickly.

We do not agree with Complainant's allegations of "foot-dragging," "continuing ignorance of the Act" and "denied public access" on the part of "the [C]ouncil and staff." This public body created lengthy minutes which not only described in detail its discussions on the substantive matters within its purview but also listed the documents handed out to the participants. By August, 2010, the Council had asked the County to assign it a web page on the County's website so that it could post its minutes, and its minutes are posted. In November, 2011, when Complainant requested minutes, and questioned whether the documents posted as minutes were indeed "minutes," and asked for the Council's bylaws, the staff and Deputy Director provided her with access to the extensive drafts, explained that a document is only posted as "minutes" upon approval by the Council, and researched the existence of bylaws. These facts suggest to us that the Council and its staff are attentive to the Act's goal of open governance and tried to provide the substantive information Complainant had requested.

In closing, we commend the Council for preferring to approve each set of minutes in an open meeting, and we also encourage it to use other methods of approval when the period between meetings becomes excessive, as occurred here with two of its meetings.

OPEN MEETINGS COMPLIANCE BOARD

*Elizabeth L. Nilson*  
*Courtney J. McKeldin*  
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